

## **MEETING MINUTES, BOARD OF ZONING APPEALS, AUGUST 11, 2008**

**Present:** Phil Tinkle, Alford Kessinger, Ken Knartzter, Mike Campbell, Ed Ferguson, Planning Director; Jay Isenberg, Asst. City Attorney, and Janice Nix, Recording Secretary

The meeting was called to order at 6:00 p.m. by Phil Tinkle, Chairman.

### **PREVIOUS MINUTES**

June 9<sup>th</sup> – Knartzter moved to approve the minutes as mailed, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

### **FINDINGS OF FACT**

**Docket V2008-010 – Dimensional Variance** – Unity Physicians – Knartzter moved that in consideration of the statutory criteria that we adopt the written Findings of Fact as presented, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2008-010, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

### **NEW BUSINESS**

**Docket V2008-011 – Dimensional Variance – 1023 Monticello Ct.** – request to allow construction of pool house 23' from Main St. – Valerie Rose, petitioner, representing.

Valerie Rose came forward and was sworn.

The statutory criteria was addressed as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** It is an improvement that is inside a 6' ft. privacy fence and will be constructed in accordance with the appropriate building codes. The decrease in the setback would not create any additional visual distractions due to the 6-ft. privacy fence and planting easement fronting Main St. The building materials used will be safe for users of the pool and will not create unnecessary safety hazards.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The new pool house structure will be more aesthetically appealing than materials that are stored behind the existing covered barn currently. The planting easement that fronts Main Street and the 6-ft. privacy fence will screen the pool house.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The lot is considered a through lot, meaning that it has frontage on both Main St. and Monticello Ct. The lot does not gain access from Main St., but from Monticello Ct. The 45-ft. setback is determined for lots on primary thoroughfare streets, for adequate space to stack cars in a driveway and to provide for future widening opportunities if the Thoroughfare Plan inadequately projects demand into the future. There is no need to stack parked cars in a driveway along Main St. and 23-ft. proposed setback is ample space for any increase in the road right-of-way due giving the existing right-of-way dedication.
4. **Criteria:** The structure is not regulated under Indiana Code 8-21-10-3 **Answer:** While the property is located within the Airspace Zoning District, it is located 7,306 feet from the runway of the Greenwood Municipal Airport. This distance establishes a 73-foot height threshold for regulation under that provision of Indiana Code, and this proposal would provide for the location of two wall signs upon an emerging 21-foot tall building and the construction of an 8-foot tall ground sign. The 73-foot height threshold has not been crossed and the proposal, therefore, is not subject to regulation under Indiana Code 8-21-10-3.

Tinkle inquired about existing items that are currently stored outside the present structure. Rose stated those items will be removed once the new structure is constructed.

Campbell moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Kessinger. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Knartzer moved that based on the evidence presented that the Board approve the granting of a dimensional variance for 1023 Monticello Ct. to allow construction of a pool house with a 23' setback from Main St., seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Knartzer moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2008-011, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

**Docket V2008-012 – Use Variance – Sam's Fuel Station** – located on N. Emerson, in front of Sam's Club - request to allow construction of gas station and carwash in the I-65 Overlay Zone – Sam's East, Inc., petitioner; Steve Huddleston, attorney, representing.

Steve Huddleston, Attorney; and Gurpeet Malhi, adjacent business owner; came forward and were sworn.

Gurpeet Malhi, who identified himself the owner of the Sunoco Gas Station, which is adjacent to this property, came forward and asked for a continuance of this petition until the next meeting in order for him to seek advice from his attorney regarding this matter.

Knartzer moved to continue V2008-012 until August 25, 2008, seconded by Campbell. Vote for **approval** of the **continuance** was unanimous, 4-0. **Motion carried.**

**Docket V2008-013 – Dimensional Variance – Pointe at Smith Valley** – located at 640 S. U.S. 31 - request to allow ground sign measuring 10' in height (Sign Code allows 4' height) – Ohio Properties, LLC, petitioner; Van Valer Law Firm, representing.

Brandi Foster, Attorney; and Nick Kirkendall, Ohio Properties, LLC; came forward and were sworn. Variance request is for a ground sign measuring 10' in height. Colored renderings of the proposed sign were shown for the Board's review.

The statutory criteria was addressed as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The requested variance will permit petitioner to erect a ground sign at a location in a viable area, which will be visually consistent with other signs in the area; and will not appear to create any adverse visual or traffic implications. The location and plans of the proposed sign appears to be compatible with not only the immediately adjacent property, but also with other projects in the general vicinity. The approval of this request will be harmonious with the general welfare of the community.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** There has been no indication that a sign of this height will negatively affect any of the adjacent property or the

flow of traffic. An additional pole sign for the RE would be permissible without a variance request, however, the Petitioner feels that an additional pole sign would create more congestion and affect to the adjacent property than would the current proposal. The proposed sign will comply with all other code requirements, was professional designed, will be professionally installed; and is aesthetically consistent with other signs in the area.

3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** Due to the design of the site plan and the location of the improvements on the RE, and being located on the corner of two streets, additional signage is necessary and permitted. Specifically, the Re contains two lots with two strip centers, containing a total of fifteen (15) leasable units. The existing pole sign contains maximum advertising space for 11 units. The lack of ample sign space for every unit creates a practical difficulty for petitioner. Additionally, certain units of the project are less visible from Smith Valley Road and U.S. 31, which causes difficulty. The proposed sign will allow for additional visibility of the project on premises and is essential to the viability of the project.
4. **Criteria:** The proposed structure is not regulated under Indiana Code 8-21-10-3 because **Answer:** While the property is located within the Airspace District, it is located 7,733 feet from the runway of the Greenwood Municipal Airport. For a structure to be regulated under Indiana Code 8-21-10-3 at this distance from the runway, it would have to exceed 77.33 feet in height. The proposed structure would be 10 feet in height.

It was discussed that if the variance is not approved, a 35' tall pole sign could be constructed there. However, proposed changes to sign code will limit ground signs to 8' in height rather than the current maximum of 4'. The staff report supported granting the variance if it is limited to 8' rather than 10' high. After further discussion, Attorney Foster asked to amend the variance request from 10' to 8' for the height of the sign. Knartzer moved to allow the amendment of the petition to request 8' rather than 10', seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Campbell moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Campbell moved that based on the evidence presented that the Board approve the granting of a dimensional variance to the Pointe at Smith Valley to allow a ground sign measuring 8' in height, as amended, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Knartzer moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2008-013, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

### **ANNOUNCEMENTS/REPORTS**

Knartzer moved to adjourn, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.** Meeting was adjourned at 6:32 p.m.

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JANICE NIX  
Recording Secretary

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PHIL TINKLE  
Chairman